IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR.

O R D E R

CTO, Anti Evasion, Ajmer Vs. M/s.Mohan Lal Gautam Chand, Beawar.

(S.B. Sales Tax Revision No.516/1999)

Date of Order : May 30, 2007.

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr. Vinay Goyal for the Revenue.
Mr. Vivek Singhal for the assessee.

BY THE COURT:

REPORTABLE

1. Heard learned counsel.

2. This revision petition is directed against the order of the Tax Board dated 10.11.1997 whereby the Tax Board held that the remand order passed by the first Appellate Authority namely Deputy Commissioner (Appeals) was illegal and thus allowed the appeal of the assessee. Hence the revenue is before this Court in the revision petition.

3. The Assessing Authority i.e. CTO, Anti Evasion, Ajmer initiailly passed assessment order on 24.1.1994 U/s.10(c) read with Section 19(3) of the Act wherein on the basis of survey dated 19.6.1991 the CTO, Anti Evasion found that purchases of Tilli to the extent of Rs.20,84,134.38 made by the assessee through commission agents was sold by the assessee without payment of any

purchase tax and, therefore, purchase tax to the extent of Rs.93,119/- was imposed upon the assessee. The assessee preferren an appeal before the learned Deputy Commissioner (Appeals) who remanded the case back to the regular Assessing Authority instead of CTO, Anti Evasion, Ajmer who originally passed the assessment order dated 24.1.l1994 holding that the CTO, Anti Evasion, Ajmer had failed to prove any case of evasion against the assessee and, therefore, he did not acquire the jurisdiction to pass the assessment order because the Anti Evasion authorities acquire jurisdiction to pass assessment order only if they have detected the evasion on the part of the assessee as per Commissioner circular dated 18.2.1992 (S.No.868B) read with relevant notification dated 23.10.1967 (S.No.135) and dated 19.7.1975 (S.No.1016 of J.K. Jain Vol.2) and dated 20.11.1996 (S.No.1070D), therefore, instead of remanding the case back to the same Anti Evasion authority the learned DC (Appeals) remanded the case back to the regular Assessing Authority. The assessee went in second appeal before the Tax Board against the said order and Tax Board allowed the assessee's appeal and held that remand order was illegal because once the DC (Appeals) found that there was no case of evasion made out against the assessee, the learned DC (Appeals) could not have remanded the case back to the regular Assessing Authority for re-enquiry into the matter.

4. This Court is of the opinion that the learned Tax Board has erred in quashing a remand order passed by the learned DC (Appeals). The mere premise taken by the learned DC (Appeals) that since the non payment of purchase tax could not be held to be a case of evasion detected by the CTO, Anti Evasion, Ajmer as the transactions were recorded in the books of accounts and therefore did not acquire the jurisdiction to pass the

assessment order but the regular Assessing Authority could pass the assessment order after making an enquiry into the fact of non payment of purchase tax, as found during the course of survey, such a remand by the DC (Appeals) to the regular Assessing Authority was unexceptional and the Tax Board could not have closed the chapter of enquiry during the assessment proceedings by the regular Assessing Authority by allowing the appeal of the assessee against a remand order.

5. The contention of learned counsel for the assessee Mr. Vivek Singhal that it amounted to transfer of case by one authority to another for which power U/s.41 of the Act only vested with the Commissioner and not with learned DC (Appeals) has no force. Section 41 of the Act permits a dealer to make an application to the Commissioner for transfer of any case on the grounds stated in Section 41 namely (a) dispute of jurisdiction; (b) apprehension of miscarriage of justice, or (c) business convenience. The said power cannot be read to exclude, prohibit or restrain the power of learned DC (Appeals) who is an independent appellate authority created under the Rajasthan Sales Tax Act, 1994 who can exercise such powers U/s.84 of the Act while deciding the appeals. Section 84(7) of the Act is reproduced here for ready reference:-

> "84(7) The appellate authority may, before disposing of any appeal make such further enquiry as it thinks fit, or may direct the assessing authority ***or the officer against whose order appeal has been preferred to make further enquiry*** and report the result of the same to the appellate authority and in disposing of the appeal the said authority may, -
>
> (a) in the case of an order of

assessment, interest or penalty, -

(i) confirm, enhance, reduce or annul the assessment, interest or penalty; or

(ii)set aside the order of assessment, interest or penalty and direct the assessing authority to pass fresh order after such further enquiry as may be directed; and

(b) in the case of any other order, confirm, cancel, vary or ***remand such order***."

6. From the bare perusal of the aforesaid provision, it is clear that not only learned DC (Appeals) can direct the Assessing Authority or the officer against whose order appeal has been preferred to make further enquiry but he can also set aside such order and can also confirm, cancel, vary or remand such order. Thus wide powers have been conferred upon learned DC (Appeals) to pass appropriate orders for further enquiry as well as reassessment in pursuance of the remand order. The assessee does not have any vested right in getting the assessment done by any particular forum or Assessing authority. Therefore, remand by learned DC (Appeals) to the regular Assessing Authority in place of CTO, Anti Evasion himself whose order was under challenge in the appeal, cannot be said to be bad in law.

7. As a matter of fact, the power of assessment must be

exercised by the regular assessing authority only. The power of investigation and detection of evasion of tax should be kept separate from the power to assess. That is bound to introduce more independence and objectivity in the assessment procedure and rule out the bias in assessment by the same authority who has detected the tax evasion. The role of investigator is certainly different from that of the Judge. Therefore, role of assessing authority and that of the Anti Evasion authority should also be kept independent ad separate. The department should consider making of the scheme for distribution of assessment powers in such manner.

8. Therefore, the impugned order of Tax Board dated 10.11.1997 is set aside and this revision petition is allowed. The regular Assessing Authority in pursuance of the order of DC (Appeals) dated 24.9.1995 would be free to undertake the assessment proceedings and pass appropriate assessment order in accordance with law.

9. The revision petition is allowed with no order as to costs.

(Dr.VINEET KOTHARI),J.

VS/